

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JEFFREY LEE HOELSCHER

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DOCKETED COMPLAINT NO.
09-083

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TX-1335416-R

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AGREED FINAL ORDER

On the 17th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Jeffrey Lee Hoelscher (the "Respondent").

In order to conclude this matter, Jeffrey Lee Hoelscher neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1335416-R, and was certified by the Board during all times material to the above-noted complaint.
2. On or about May 22nd, 2007, Respondent appraised real property located at: 2706 Monte Grande Drive, San Juan, Hidalgo County, Texas 78589 ("the property").
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board notified Respondent of the nature of the accusations

involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which he did.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the property:

USPAP Ethics Rule (Record Keeping) – Respondent violated the Ethics Rule because he failed to maintain work files containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provision;

USPAP Standards 1-4(f) & 2-2(b)(viii) – Respondent failed to consider and report any anticipated public and/or private improvements located on or off site. In particular a large water tower adjoined the property, but was not reported, nor was its potential impact on value analyzed;

USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;

USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value, failed to provide any support for his site value determinations in his report, did not summarize his reasoning supporting those determinations nor did he provide any documentary support for those conclusions in his work file;

USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) ; 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze, or reconcile the cost new of improvements and did not employ recognized methods and techniques correctly. Respondent failed to provide any support for his cost new of improvements determinations in his report, did not summarize his reasoning supporting those determinations nor did he provide any documentary support for those conclusions in his work file;

USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a)– Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately and did not correctly employ recognized methods and techniques in his sales comparison approach;

USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze a listing of the subject current as of the effective date of the appraisal;

USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze a sale of the subject which occurred 43 days prior to the effective date of the appraisal; and,

USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing the methods and techniques correctly. This resulted in an inflated appraisal report that was not credible or reliable.

Respondent made material misrepresentations and omissions of material fact with respect to his appraisal of the property as detailed above.

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The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser certification be suspended for a period of 12 months, effective 5:00 p.m., May 17th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., May 17th, 2013, the suspension is to be fully probated for 12 months ending May 17th, 2014,

subject to the following terms and conditions:

EDUCATION. On or before November 17th, 2013, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

A minimum 7 classroom-hour course in Residential Sales: The Adjustment Process;

No examination shall be required for this course.

A minimum 7 classroom-hour course entitled, "Write it Right"; and,

No examination shall be required for this course.

REPORT WRITING. In conjunction with the below-noted, probated administrative penalty, on or before November 24th, 2013 Respondent shall submit a separate, 1 page, written report for each of the 2 courses in which he:

(a) Describes and explains what he learned from the applicable course of mentorship period;

(b) Describes what was previously deficient with his work product; and,

(c) Describes what steps he will take in his appraisal practice going forward to avoid further violations of USPAP and state law.

MENTORSHIP. Respondent shall complete 10 hours of in-person mentorship conducted by a certified USPAP instructor approved by Board staff in accordance with the deadlines and schedule of topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. **Respondent is solely responsible for locating and**

scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

- A. On or before **August 17th, 2013**, 5 hours of mentorship in sales comparison data analysis, with 2.5 of those hours dealing with analysis, methods and techniques related to adjustments and the other 2.5 hours dealing with selection of comparable sales;
- B. On or before **August 17th, 2013**, 5 hours of mentorship in listing history, sales history and contract analysis and reporting, with 2.5 hours dealing with reconciling these different pieces of data amongst themselves and also reconciling this data with data from the sales comparison approach and 2.5 hours dealing with adequate discussion of the reasoning supporting the opinions and conclusions reached in an appraisal report; and,
- C. **REPORT WRITING.** In conjunction with the below-noted, probated administrative penalty, on or before **August 27th, 2013** Respondent shall submit a separate, 1 page, written report for each of the 2 mentorship periods in which he:
 - (a) Describes and explains what he learned from the applicable course of mentorship period;
 - (b) Describes what was previously deficient with his work product; and,
 - (c) Describes what steps he will take in his appraisal practice going forward to avoid further violations of USPAP and state law.

LOGS. On or before **February 27th, 2014**, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of **November 17th, 2013 to February 17th, 2014**. The log shall detail ***all*** real estate appraisal activities Respondent has conducted during that three month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request;

NO TRAINEES. Respondent is prohibited from sponsoring, employing or using any appraiser trainees in his real estate appraisal activities during the

entire period of his 12 month probated suspension;

Fully and timely comply with all of the provisions of this Agreed Final Order; and,

Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

IT IS FURTHER ORDERED that Respondent pay an administrative penalty in the amount of \$1,500 on or before June 7th, 2013. However, IT IS FURTHER ORDERED that the entire administrative penalty is to be fully probated subject to timely completion of all the terms contained in this agreed final order and satisfying the above-noted report writing obligations.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. IN ADDITION, THE FULL ADMINISTRATIVE PENALTY SHALL BE DUE WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION.

ANY SUCH SUSPENSION AND ADMINISTRATIVE PENALTY SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

RESPONDENT IS SOLELY RESPONSIBLE FOR TIMELY DELIVERY TO THE BOARD OF ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE OF THIS AGREED FINAL ORDER. PAYMENT OF ANY ADMINISTRATIVE PENALTY DUE MUST BE IN THE FORM OF A CASHIER'S CHECK OR MONEY ORDER MADE PAYABLE TO THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. RESPONDENT SHALL RETAIN DOCUMENTATION (REPLY EMAIL, FAX CONFIRMATION, RETURN RECEIPT, ETC.) CONFIRMING RECEIPT BY THE BOARD OF ALL THE NECESSARY DOCUMENTS.

RESPONDENT SHALL SEND ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE BY: (1) EMAIL TO COMPLIANCE.TALCB@TALCB.TEXAS.GOV, (2) FAX TO (512) 936-3966, ATTN: COMPLIANCE, OR (3) CERTIFIED MAIL RETURN RECEIPT REQUESTED TO STANDARDS & ENFORCEMENT SERVICES, TEXAS APPRAISER LICENSING & CERTIFICATION BOARD, STEPHEN F. AUSTIN BUILDING, 1700 N. CONGRESS AVE., SUITE 400, AUSTIN, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR MENTORSHIP OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 5 day of April, 2013.


JEFFREY LEE HOELSCHER



TED WHITMER, ATTORNEY FOR
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the
5th day of April, 2013, by JEFFREY LEE HOELSCHER, to
certify which, witness my hand and official seal.

Brenda F. Gonzalez
Notary Public Signature

Brenda F. Gonzalez
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 16th day
of MAY, 2013.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May,
2013.

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of
May, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board